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USDA FOR FAS/ITP/SHEIKH AND HUYNH  
GENEVA FOR USTR

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SUBJECT: Vietnam: Second Annual U.S.-Vietnam BTA Joint  
Committee: Scenesetter - the BTA at One Year

[11.](#) (U) Sensitive but Unclassified -- Please protect accordingly.

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OVERVIEW  
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[12.](#) (SBU) Ensuring timely and effective implementation of the U.S.-Vietnam Bilateral Trade Agreement (BTA) continues to be the centerpiece of our economic relations with Vietnam. The BTA continues to be our best tool to achieve a broad range of policy objectives in the coming years. It is now 14 months since the U.S.-Vietnam Bilateral Trade Agreement came into force on December 10, 2001 and almost one year since the USAID-funded Support for Trade Acceleration (STAR) Project began working with the Vietnamese government, joining our other USG sponsored technical assistance programs provided by individual agencies and the U.S.-Vietnam Trade Council (USVTC). The GVN has made significant changes since December 2001, although progress has been uneven. The bulk of Vietnam's core commitments were due upon entry and we believe that the GVN is in most cases making a good faith effort to meet most of those obligations in the face of continued weak capacity. The GVN spent much of the last year trying to formulate action plans for implementation by reviewing the legal framework and assessing needed changes to bring laws, rules, and regulations into conformity with the BTA. The USG has been instrumental in assisting the GVN take on this sizeable and complicated task.

[13.](#) (SBU) The trade playing field is starting to level slowly - US exports increased more than 30% in 2002, primarily due to lower tariffs but also due to increased interest in the market. The GVN still plays a dominant role in Vietnam's economy but the private sector is seeing robust growth, with strong job creation and a growing percentage of industrial production. International economic integration is proceeding with a number of AFTA commitments kicking in this year even if WTO accession talks are proceeding more slowly than expected. Legal reform continues to occupy center stage in the GVN's implementation efforts, with several significant new or revised laws, rules, and regulations passed in 2002. While the GVN is behind schedule in a number of areas, overall, progress is being made. We will be meeting with the Government of Vietnam (GVN) March 10 for the second annual U.S.-Vietnam Joint Committee under the BTA (following expert level talks on March 4-5). The following scene setter provides Embassy review of the status of BTA implementation, an update on the progress of various technical assistance programs, and issues that should be highlighted at the Joint Committee.

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The Honeymoon is Over  
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[14.](#) (SBU) When DUSTR Huntsman and then Minister of Trade Vu Khoan convened the first BTA JC last May, we were clearly still in the "honeymoon" period after the ratification and entry-into-force of the agreement. The atmosphere for these talks has changed - the honeymoon is definitely over. Vu Khoan has moved up to the Deputy Prime Minister's office and former Minister of Trade and BTA negotiator Truong Dinh Tuyen has once again picked up the reigns at MOT. The antidumping case on frozen fish fillets (or the fish formerly known as catfish) and threats of an antidumping case on shrimp have quickly dissipated much of the positive political capital that should have been accruing this year based on the tremendous success of Vietnam's exports to the U.S. In addition, the US and Vietnam will have just begun, if not finished, textile negotiations - which will put in place an agreement to limit the exports to the U.S. of textiles - one of Vietnam's fastest growing export commodities this past year. In many ways, the reality of the required BTA commitments has started to sink in and is

perhaps at contrast with original expectations and understanding of what the BTA would do. Many GVN officials viewed the BTA as the culmination of a process rather than the beginning, and have genuinely been surprised by recent trade disputes with the U.S.

15. (SBU) We should acknowledge Vietnam's progress and encourage continued reform, while stressing the need for Vietnam to move more quickly to reflect its BTA commitments in law and in practice. Many GVN officials either do not understand (or choose not to understand) which issues fall under the BTA and which fall under the category of general trade relations. On the date of entry into force, the U.S. fully met all its obligations under the BTA; the GVN's obligations are phased in over 9 years and the GVN is still struggling to implement many obligations that were due upon entry. Thus, any time there is an assessment of the progress of BTA implementation, the GVN, by default, bears the brunt of the criticism. While the GVN may have legitimate complaints regarding the catfish antidumping case, they are also clearly searching for issues to raise under the BTA to "even the score", such as limitations on business visas or other "business facilitation" issues. In addition, the GVN has and will likely continue to downplay the tremendous success Vietnam has seen on the trade side this past year. In a period where Vietnamese exports to other countries either decreased or remained relatively static, exports to the U.S. increased more than 100 percent. By any definition, this is an impressive result. In the MOT's official report on implementation sent to the Prime Minister in December, however, the MOT stated that although the trade relationship had taken some "promising steps in the spirit of the BTA, trade turnover figures between the two countries remain low, and some matters have arisen showing inequality in the trade relationship between the two countries, notably the catfish dispute."

16. (SBU) The GVN has had difficulty in ensuring enforcement of BTA implementation at the provincial levels - a problem that, if not addressed more effectively by the GVN, will seriously impede Vietnam's ability to meet its BTA commitments - particularly in the area of investment. With little ability to force provincial officials to toe the line, the GVN has focused on an information campaign regarding obligations under the BTA to try to bring those officials along - with only mild success. One key GVN official argued that it is difficult to convince the provincial and local governments that the BTA will benefit them in the face of the frozen fish fillet and other trade disputes. We need to impress upon the GVN that ultimately the central government alone bears the responsibility to ensure that central, provincial, and local government officials fully implement the BTA.

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BTA - The WTO and Beyond  
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17. (SBU) This visit presents another important opportunity to remind the Vietnamese of the broader implications and benefits associated with implementation of the BTA. The BTA is the GVN's most effective roadmap to reform consistent with international standards. The reform and international integration efforts called for under the BTA are critical to the GVN's own growth and development objectives. WTO member countries see Vietnam's progress in BTA implementation as an indication of how serious Vietnam is in its efforts to integrate. If BTA implementation falters, Vietnam's efforts to accede to the WTO will be setback significantly. We also need to remind the Vietnamese that the benefits of the BTA reach far beyond the quick boost in trade that lower tariffs promise; proper implementation will create in Vietnam the type of environment that will attract high quality investment and trade.

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Issues for the Joint Committee  
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18. (SBU) While other members of the delegation will have an opportunity in the "expert sessions" to explore fully the technical issues of implementation, there are a number of key themes that DUSTR Huntsman may wish to address in the plenary session on March 10.

THEME ONE: The U.S. already has fully implemented the BTA and opened wide its market to Vietnamese goods, services and investment. Vietnam is already reaping significant benefits from this market access.

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19. (SBU) The overall tone of our discussion should be positive and cooperative, but we also must lay down appropriate markers that we will not ignore Vietnam's commitments and that greater effort must be made to stick to the implementation timetable. We continue to need to

stress the point that the U.S. has already fully implemented the BTA. This is perhaps even more important now that much GVN rhetoric over the last year has focused on "lack of U.S. commitment" to the spirit if not the letter of the BTA due to the catfish antidumping case and other irritations in the bilateral economic relationship. The GVN has sought to bring all disagreements under the rubric of the "spirit of the BTA." MOT's year-end report on the status of BTA implementation concluded, "Although the US undertook to liberalize trade, it has in fact erected barriers and needs to take anti-dumping and other measures."

110. (SBU) The GVN has on several occasions implicitly and explicitly linked BTA implementation with favorable outcomes on unrelated issues - most specifically the frozen fish dumping case. In October, during a meeting with USG officials, an official from the Office of the Government (the Prime Minister's office) attempted to explicitly link a "reasonable resolution" of the frozen fish fillet dumping case to progress on IPR and other BTA implementation issues. DPM Vu Khoan echoed this sentiment recently when he told news agencies that the decision by the USDOC that Vietnam is dumping frozen fish fillets on the U.S. market will "curb the acceleration of BTA implementation." In addition, at the one-year anniversary of the BTA, the GVN seemed to make a conscious decision to downplay the enormously successful results on the trade side - not acknowledging that we had opened our markets fully and that Vietnam has benefited significantly.

111. (SBU) The GVN has also failed to acknowledge when the U.S. is actively enforcing its BTA commitments, such as trademark protection. The GVN has complained about several cases where competing trademark applications for Vietnamese products, such as Trung Nguyen (coffee) and PetroVietnam have been filed with the U.S. Patent and Trademark Office. Although the cases are being handled appropriately, i.e. in a transparent and legalistic manner, the GVN has attempted to link the lack of political intervention in the process as evidence of a lack of will by the USG to uphold its commitments, stating that "the US has complained that Vietnam is late in implementing TRIPS, whereas in fact under the BTA both sides are in breach."

THEME TWO: The U.S. and Vietnam have worked together in a positive and constructive manner to assist the GVN in its reform effort and implementation of the BTA.

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112. (SBU) The progress over the last year across the board on cooperative, constructive engagement has been significant. USG agencies and our technical assistance providers have worked with the GVN on issues ranging from training for Supreme Court justices to international arbitration to rule of law and sectoral issues like tariff reform, insurance, and banking reform. USG technical assistance and our providers are working with more than 40 government ministries, departments, agencies and local people's committees. The breadth and depth of this effort should be highlighted and commended on both sides. We should stress that we place a priority on continued positive momentum and real results.

THEME THREE: Vietnam has made commendable progress in implementing new legislation, but many laws, regulations and administrative practices do not yet meet BTA obligations. Despite this, we expect that U.S. nationals, products and companies will be accorded BTA treatment even when existing regulations are contradictory.

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113. (SBU) Over the last year, a number of important laws have been drafted or revised, such as the Law on the Promulgation of Legal Normative Documents ("Law on Laws") and the Ordinance on Most Favored Nation and National Treatment, bringing them closer to BTA compliance but in some cases still falling short. Additionally, numerous others remain inconsistent with BTA obligations that were due upon entry-into force, due at the one year mark or are due in the near future. While acknowledging the depth and breadth of the Vietnamese effort to reform the legal framework, we should strongly emphasize that regardless of the status of reform of laws and regulations, we expect that Vietnam will meet its commitments and provide assurances that U.S. nationals, products, and companies will be accorded BTA treatment even when existing regulations are contradictory.

THEME FOUR: Normal, active trade and economic relationships require regular dialogue. Encourage Vietnam to work with us on a daily basis to resolve ongoing issues on both sides. The key is to work together to resolve issues in a cooperative manner.

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114. (SBU) The GVN tends to see political messages behind

even minor technical trade/economic issues and thus often reserves problems or concerns for discussion at high-level meetings, such as the annual Joint Committee meetings. While we will always have a mismatch of delegation of authority (i.e. we make decisions at much lower levels), this preference for a more formal route for what may be mundane or minor issues is a less-than-efficient use of senior officials time. Additionally, many of the questions, problems, and issues that have been informally proposed for Joint Committee meetings could easily be resolved through informal working level discussions (for example questions about SA8000 certification). We should stress that as our economic relations expand, issues will arise - it is a normal if somewhat unfortunate situation. We should encourage the GVN to relay issues as they come up so that they can be addressed quickly in the appropriate forum.

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General update on implementation  
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Trade in Goods  
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15. (U) MFN/National Treatment for Imports: Vietnam did enact an NT and MFN ordinance this year which covers goods as well as services, and investment (Hanoi 1766) and that's a good start. However, a broad array of regulations related to VAT taxes, special inspection and quality-control requirements and rules for trading that are not applied equally to domestic goods remain inconsistent with Vietnam's commitments to provide national treatment, except for exempted goods. Vietnam is currently working to bring these regulations into conformity but we need to stress we expect BTA treatment regardless.

16. (U) In 2002 the USAID-funded STAR project provided the GVN with detailed analysis of key pieces of legislation related to the Trade in Goods chapter of the BTA including the draft Ordinance on Commercial Arbitration, the draft Commercial Law, and the draft Ordinance on E-Commerce. STAR also provided training and workshops on E-Commerce, trade policy procedures and customs issues. USG-funded technical assistance projects related to trade in goods planned for 2003 include:

-- (STAR) Follow-up assistance in revising and implementing the draft Ordinance on Commercial Arbitration and the draft Commercial Law.

-- (STAR) Training and technical assistance for Customs on meeting BTA obligations.

-- (STAR, USDOC) Support for a conference on trade-related technical standards for the Ministry of Science and Technology (MOST).

-- (STAR) Provide support to the Ministry of Fisheries in implementing BTA obligations.

-- (USVTC) A study tour in the U.S. on technical regulations and standards. Participants will include: GVN officials from the MOT, MOST, the Ministry of Health (MOH), and the Ministry of Industry (MOI) as well as the National Assembly.

-- (USVTC) A study tour in the U.S. on Sanitary and Phytosanitary (SPS) Measures. Participants will include: GVN officials from the Ministry of Agriculture and Rural Development (MARD), MOH and MOT.

Intellectual Property Rights  
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17. (SBU) Vietnam has come a long way in revising legislation to bring its IPR laws into compliance with its BTA commitments, but gaps remain. Commitments related to trademarks and patents were due 12 months after entry into force (December 2002); commitments on copyright and trade secrets are due in May 2003. The main issue continues to be

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lack of IPR enforcement, particularly with respect to copyrights and trademarks. Vietnam committed in the BTA, upon entry-into-force, to enforce existing laws, the U.S.-Vietnam Copyright Agreement, and the Paris Convention. No such routine and reliable enforcement exists. While there have been some well-publicized raids over the last year, they are few, ineffective and prompted by the copyright/trademark holders with little to no independent action by GVN authorities.

18. (U) Microsoft, for example, worked with HCMC law enforcement officials earlier this year to raid shops selling pirated Microsoft software. Authorities raided 6 or 7 of the probably hundreds of shops in the city which openly sell pirated software. Only nominal fees were levied (12

million Dong per violator, or approximately USD 780), there has apparently been no follow up by local authorities, and the shops quickly re-opened. Although the raids can be seen as a positive first step, clearly much needs to be done before Vietnam can be considered serious in addressing IPR enforcement concerns.

19. (U) In 2002 the STAR program supported several seminars, workshops and conferences on IPR for judges, court officials, government officials, business leaders and IP-related agencies. STAR also sent a delegation from the Supreme People's Court to Thailand to learn about Thailand's specialized IP court. USG-funded technical assistance projects related to IPR planned for 2003 include:

-- (STAR) Support the Ministry of Culture and Information (MOCI) in the development of stronger regulations for optical disc production and distribution.

-- (STAR) Provide detailed comments to the Ministry of Justice (MOJ) on the revision of Part VI of the Civil Code, which establishes the legal basis for IP protection in Vietnam.

-- (STAR) Support GVN efforts to meet the standards necessary to accede to the IP conventions cited in the BTA.

-- (STAR) Provide support to the Supreme People's Court and Customs in meeting BTA IPR-related obligations.

-- (USVTC) Conduct a study tour to the U.S. on IPR issues, particularly those related to Special 301. Participants will include officials from the MOCI.

-- (USVTC) Conduct a study tour to the U.S. on IPR enforcement issues. Participants will include: GVN officials from the MOCI, MOST, Customs, and the Supreme People's Court.

#### Trade in Services -----

20. (U) Vietnam's commitments to provide increased market access, MFN and National treatment to US service providers are phased in over 2 to 9 years after entry-into-force of the agreement (depending on the sector). However, in some areas Vietnam has begun on a case-by-case basis to grant greater access by U.S. firms in advance of its BTA obligations in some limited sectors (insurance, banking).

21. (U) In 2002 STAR organized workshops, a study tour, and provided detailed comments on revisions to the draft Decree on Foreign Lawyers. STAR also supported workshops and conferences on E-Commerce, telecommunications, and financial services. USVTC conducted a study tour to the U.S. on WTO services issues. In addition, in cooperation with the Embassy, the Pacific Investment Management Company (PIMCO) hosted a two-day seminar for key GVN and State Bank officials in early January related to banking reform, and plans to host another seminar at the end of February. USG-funded technical assistance projects related to Trade in Services planned for 2003 include:

-- (STAR) Provide technical support to the Ministry of Post and Telecommunications (MPT), the State Bank of Vietnam (SBV), the Ministry of Construction and the Ministry of Finance (MOF) on BTA implementation issues related to telecommunications, construction and financial services.

-- (USVTC) Conduct a study tour to the U.S. focused on implementation of BTA obligations related to telecommunications services and banking and financial services. Participants will include: GVN officials from the MPT, the Ministry of Public Security (MPS), the Ministry of Planning and Investment (MPI), the Office of the Government and the National Assembly.

-- (USVTC) Conduct a study tour to the U.S. on banking and financial sector development. Participants will include: officials from the SBV, the MOF and the Office of the Government.

#### Investment -----

22. (U) The 2000 revised Law on Foreign Investment represents a significant step forward in bringing the GVN's investment regime into compliance with the BTA. However, Vietnam still has much work to do to bring its laws and regulations on foreign investment fully into conformity with BTA obligations that were due upon entry-into-force. Most of the inconsistencies are related to a lack of national treatment. Additionally, even where the laws are clear, the GVN has had difficulty enforcing them at the provincial and local levels. Enforcement of arbitral awards and the courts interpretation of Vietnam's obligations under the New



York Convention are other areas for particular concern.

123. (SBU) At the First BTA Joint Committee, we raised the case of McCullagh Krong Ana Joint Venture, which involves a U.S. company involved in a joint venture in Dak Lak province that has been trying to buy out its Vietnamese partner since 1998. Both the partner and MPI have approved the buyout. However, the Provincial Department of Planning and Investment in Dak Lak refuses to allow the transaction to occur. The case potentially violates the National Treatment, MFN and technology transfer portions of the investment chapter. We are continuing to press the GVN to resolve this issue.

124. (SBU) In a second case, the Mission has been assisting Tyco Services Singapore since 2001 in its attempts to get two arbitral awards enforced in Vietnam. In January the Vietnamese Supreme Court reversed a May 2002 landmark decision by the Ho Chi Minh City Economic Court (supported by the Ministry of Justice) that would have recognized an international arbitral award for the first time. We believe that this case highlights the current lack of understanding at the highest judicial levels of modern, market-based normal business transactions (in particular the definition of a commercial transaction or contract), Vietnam's international obligations, and a continuing lack of transparency in legal decisions. It also raises questions about Vietnam's ability to live up to its obligations under the BTA and the New York Convention. We understand that Tyco officials are considering requesting a review of the Supreme Court decision. We recommend that this issue be raised in the BTA Joint Committee meeting, not to argue the merits of the case but to stress our expectation that U.S. businesses will be treated fairly by the Judicial system and that international commitments will be respected.

125. (U) In 2002 STAR supported the MPI in the development and publication of an "Investment Guidebook for Vietnam" and provided MPI with detailed comments on proposed amendments to Decree 24 on investment procedures. In October, USVTC hosted a delegation of eight inter-ministerial officials to the U.S. to look at issues relating to Vietnam's membership in the International Center for the Settlement of Investment Disputes (ICSID). USG-funded technical assistance projects related to Investment planned for 2003 include:

-- (STAR) Provide support to MPI in its efforts to revise the Law on Foreign Investment.

-- (STAR) Provide training related to implementing ICSID procedures.

-- (STAR) Support MPI in 1) developing a website for disseminating information on foreign investment policies and procedures and 2) developing a systematic analysis of the difficulties faced by foreign investors in Vietnam.

-- (USVTC) Conduct a study tour to the U.S. on investment and investment disputes.

-- (USVTC) Conduct follow-on workshops on accession to ICSID.

#### Business Facilitation

126. (SBU) The GVN may raise the issue of business visas for Vietnamese nationals. On many occasions the GVN has complained about 1) visa issuance requirements (which have resulted in the refusal of applicants); how long the application process takes; and 3) the short length of stay allowed in the U.S. Post will provide DUSTR Huntsman and participants in the "expert sessions" with background and talking points on this issue upon arrival in Hanoi.

#### Transparency

127. (SBU) Vietnam moved forward on efforts to enhance transparency, but Vietnam's laws, regulations, and rule-making processes are still far from compliant with this obligation. After much debate, the National Assembly passed a revised "Law on Laws" at the end of 2002, which is supposed to provide the legal framework for many of the changes related to transparency commitments that were due upon implementation. While the revised law made noteworthy improvements, it still does not conform with BTA obligations. Of particular concern, the revised law 1) does not adequately address the issue of public comment and 2) does not include GVN orders, decisions, directives or circulars in the definition of a "legal normative document."

128. (SBU) Although many GVN officials will admit that in the cases where Vietnam has circulated draft laws and regulations to industry and technical assistance providers, the end result has been much better laws and rules, the

National Assembly saw the issue of public comment in terms of national sovereignty and deleted that provision from the final version of the revised law. Likewise, when new rules have been published well in advance of their effectiveness, implementation has been much smoother and the rules have been much better received by the business community.

129. (SBU) However, Vietnam has not yet instituted a formal regime to publish all laws, regulations, and administrative practices promptly in a centralized source and in advance of implementation to give companies an opportunity to adjust their operations accordingly, and to provide opportunity for input into the formulation process. We have been trying to follow this issue closely and work with US firms to ensure that any lack of transparency regarding new rules and regulations does not have a negative impact on their operations. There have been some noteworthy cases; at the top of the list was a December 2002 decision by the Ministry of Finance, which would have doubled import tariffs on auto kits. The decision was based on a non-public "official letter" from the Prime Minister and although it was due to take effect on January 1, as of December 18, it had not yet been issued publicly, published in the Official Gazette or officially conveyed to the auto producers. (MOF subsequently agreed to "delay" the decision.)

130. (U) In 2002 STAR supported the Office of the Government's efforts to develop an "Action Plan for Transparency," provided detailed comments on proposed revisions to the Law on Laws and the draft Decree on the Official Gazette, and hosted conferences and workshops on transparency related obligations. USG-funded technical assistance projects related to transparency planned for 2003 include:

-- (STAR) Support GVN efforts to further revise the Law on Laws and improve the legal framework for the Official Gazette.

-- (STAR) Support the MOJ in drafting a new "Law on Promulgation of Local Level Legal Normative Documents."

-- (STAR) Support efforts to improve publication of laws and court decisions at all levels of government.

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